

# Nationality Unknown?

AN OVERVIEW OF THE  
SAFEGUARDS AND  
GAPS RELATED TO  
THE PREVENTION OF  
STATELESSNESS  
AT BIRTH IN HUNGARY

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January 2014



*Funded and supported by*  
the United Nations High Commissioner for Refugees  
Regional Representation for Central Europe, Hungary Unit

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Published by: **Hungarian Helsinki Committee**  
Bajcsy-Zsilinszky út 36–38., H-1054 Budapest, Hungary  
[www.helsinki.hu](http://www.helsinki.hu)



The Hungarian Helsinki Committee is a founding member of the  
**European Network on Statelessness (ENS)**  
[www.statelessness.eu](http://www.statelessness.eu)



This publication was made possible by the generous support of the **United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Central Europe**. The views expressed in this publication are those of the author and the Hungarian Helsinki Committee, and do not necessarily reflect the views of the UNHCR.

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Cover illustration: András Baranyai  
Design and layout: Judit Kovács, Createch Ltd.

Proof-reading: Eszter Tímár

Thanks to: Ágnes Ambrus, Katinka Huszár, Inge Sturkenboom, Radha Govil, Laura van Waas, Katalin Haraszti, Katalin Szilas, Zoltán Somogyvári, Melinda Vittay and John Parle

# Executive summary

Hungary is a state party to all statelessness-related international conventions, and in recent years it has taken significant steps in order to improve its legal framework concerning the prevention of statelessness at birth. Nevertheless, there are still **important shortcomings** both in the legislative framework and the practice of authorities.

Hungarian legislation provides **sufficient safeguards**, in line with the country's international obligations, for the prevention of statelessness in case of **foundlings**. As significant positive development, since 2011 children born to an unknown father and a known mother – whose identity is not proved and abandons the child in the hospital after birth – are also treated as foundlings and thus automatically acquire Hungarian nationality.

For children born in Hungary who are not foundlings, **Hungarian law does not establish a general safety net against statelessness at birth** (only children born to stateless parents with a domicile obtain Hungarian nationality automatically at birth). Instead, children who do not acquire any nationality at birth can obtain **Hungarian nationality by declaration** (a non-discretionary process created with a view to fulfil the country's relevant international obligations). However, the rules relating to this procedure are **in breach of Hungary's international obligations**, as they include **conditions not permitted** under the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality:

- The child's parents must have a domicile (see below) when the child is born;
- Instead of 5 years of habitual residence, 5 years of residence with a domicile is required;
- The option is open to persons concerned until the age of 19, instead of 21.

The restrictive legal concept of **domicile** (*lakóhely*) plays a crucial role in **hindering access to Hungarian nationality** for those entitled to it under the country's international obligations. Hungarian law does not allow certain categories of foreigners to establish a domicile in the country, regardless of the fact that they reside in the country in a lawful and habitual manner. These categories include recognised stateless persons, beneficiaries of a tolerated (*befogadott*) status, as well as all third-country nationals without a permanent resident status.

In consequence of the above factors, the prevention of statelessness is not properly ensured in all relevant cases. Research for this report has identified **three particular groups of concern**:

- **Group 1: Children born in Hungary to stateless persons with no domicile;**
- **Group 2: Children born to parents who are unable to pass on their nationality to their children** (because of *jus soli* or sex discrimination, for instance);
- **Group 3: Children born to beneficiaries of international protection** (refugees, beneficiaries of subsidiary protection and tolerated status):
  - **Group 3/A:** ...who are unable to pass on their nationality to their children because this would require contact with the authorities of the country of origin (e.g. registration with consular authorities) which is impossible and prohibited in these cases;
  - **Group 3/B:** ...who – based on national law – pass on their nationality to their children, but this nationality cannot be registered in practice (based on the enduring impossibility/prohibition to contact the authorities of the country of origin).

**Children belonging to Group 1, 2 and 3/A are born stateless** in Hungary, yet they are neither granted Hungarian nationality *ex lege* at birth, nor are they entitled to acquire Hungarian nationality in a non-discretionary manner following five years of habitual residence in the country. This constitutes a breach of Article 1 (2) (a)-(b) of the 1961 Convention on the Reduction of Statelessness, Article 6 (2) (b) of the 1997 European Convention on Nationality and Articles 3 and 7 of the 1989 Convention on the Rights of the Child.

**Children belonging to Group 3/B may be at risk of statelessness** (depending on the individual circumstances of the cases), and in lack of proper mechanisms ensuring their access to a nationality, they **permanently remain registered as of unknown nationality**. This constitutes a breach of Articles 3 and 7 of the 1989 Convention on the Rights of the Child and is in conflict with the relevant guidance of the UNHCR and the Council of Europe.

This report provides a detailed insight into these issues and presents a set of **concrete recommendations** for Hungarian authorities with the aim of finding effective solutions for the complex problem of preventing statelessness at birth, in line with the country's international obligations and with due respect to the overarching principle of the child's best interests.

# I. Introduction

At the time of writing, Hungary is one of the few states in the world to operate a specific mechanism for the protection of stateless persons; in many aspects its dedicated statelessness determination procedure may be referred to as a model.<sup>1</sup> In addition to this important achievement, Hungary has shown a positive example of addressing statelessness through foreign policy measures, as well as in reaching an outstanding ratification rate with regard to nationality- and statelessness-related international legal instruments. Nevertheless, a lot remains to be done in order to ensure the complete and effective fulfilment of the country's international obligations relevant to statelessness. Besides fundamental and widely criticised shortcomings in the access to statelessness determination and the related protection status,<sup>2</sup> previous research in 2010 also identified **significant gaps in the measures aiming at the prevention of statelessness in case of children born on the territory of Hungary**.<sup>3</sup> The objective of the present research is:

- to explore in **more detail** these gaps;
- to present their **actual impact** through case examples;
- to identify any **potential improvement** since 2010; as well as
- to provide **concrete recommendations** for a regulation and practice that can ensure the effective avoidance of statelessness at birth, in line with Hungary's international obligations.

The author has aimed for a **concise** format and **practice-oriented** style. The text reflects the situation as in January 2014, and all translations are unofficial. Following the common usage in international legal English, the words *nationality* and *citizenship* are treated as synonyms throughout this report.

The case studies included in this publication have been identified through the lawyers of the Hungarian Helsinki Committee, who provide assistance to persons in need of international protection. The names used in case studies have been modified in order to protect the privacy of the persons concerned. Relevant evidence proving the veracity of the case studies is available from the Hungarian Helsinki Committee.

The research has been supported by the Hungary Unit of the UNHCR Regional Representation for Central Europe.

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1 See European Network on Statelessness (Gábor Gyulai), *Statelessness determination and the protection status of stateless persons – A summary guide of good practices and factors to consider when designing national determination and protection mechanisms*, December 2013; as well as Hungarian Helsinki Committee (Gábor Gyulai), *Statelessness in Hungary – The protection of stateless persons and the prevention of reduction of statelessness*, December 2010, Chapter I

2 Hungarian Helsinki Committee (Gábor Gyulai), *Statelessness in Hungary – The protection of stateless persons and the prevention of reduction of statelessness*, December 2010, Chapter I.4.2

3 Hungarian Helsinki Committee (Gábor Gyulai), *Statelessness in Hungary – The protection of stateless persons and the prevention of reduction of statelessness*, December 2010, Chapter II.3

## II. International obligations

Hungary is a state party to all the universal and regional conventions relevant for the issue in focus, namely

- the 1961 Convention on the Reduction of Statelessness;<sup>4</sup>
- the 1979 Convention on the Elimination of All Forms of Discrimination against Women;<sup>5</sup>
- the 1989 Convention on the Rights of the Child;<sup>6</sup>
- and the 1997 European Convention on Nationality.<sup>7</sup>

Considering these four instruments in conjunction, Hungary has the following **obligations** with regard to the prevention of statelessness in case of children born on its territory:<sup>8</sup>

- Hungary shall ensure that all children born on its territory can exercise their **right to a nationality**, with particular attention to those children who would otherwise be stateless;<sup>9</sup>
- Hungary shall provide for its nationality to be acquired *ex lege* by **foundlings** found on its territory who would otherwise be stateless;<sup>10</sup>
- Hungary shall provide for its nationality to be acquired by **children born on its territory who do not acquire at birth another nationality**, either at birth *ex lege* or subsequently, to children who remained stateless, upon application (with the possibility to require maximum five years of habitual residence before submitting the application, but no other conditions)<sup>11</sup> and the period in which persons concerned can lodge this application shall not start later than at the age of 18 years and shall not end earlier than at the age of 21 years;<sup>12</sup>
- Hungary shall ensure that **women have the right to confer Hungarian nationality** to their children on an equal basis as men;<sup>13</sup>
- In dealing with all these matters, **the best interests of the child** shall be a primary consideration for Hungarian authorities.<sup>14</sup>

In interpreting these obligations and principles, the **UNHCR Guidelines on Statelessness No. 4** is of great utility and has been extensively consulted in the drafting of this report, together with other soft law recommendations, such as the Council of Europe Committee of Ministers Recommendation on the nationality of children.<sup>15</sup>

4 Promulgated by Act XV of 2009, see in particular Articles 1 and 2

5 Promulgated by Act LX of 2001, see in particular Article 9

6 Promulgated by Act LXIV of 1991, see in particular Articles 3 and 7

7 Promulgated by Act III of 2002, see in particular Articles 4 and 6

8 Where a certain issue is addressed by more than one relevant convention, the “stronger” obligation is considered.

9 1989 Convention on the Rights of the Child, Article 7

10 1997 European Convention on Nationality, Article 6 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 2

11 1997 European Convention on Nationality, Article 2) 6) (b), “*Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application*”; 1961 Convention on the Reduction of Statelessness, Article 1 (2) (b), “[...] *that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all.*” The 1961 Convention includes other potential conditions as well; however these would result in the breach of the European Convention. At the same time, the lawful and habitual residence condition enabled under the European Convention would be in breach of the 1961 Convention, which only allows for a requirement of habitual (but not necessarily lawful) residence, habitual residence being a matter of fact, and not of legal status.

12 1961 Convention on the Reduction of Statelessness, Article 1 (2) (a)

13 1979 Convention on the Elimination of All Forms of Discrimination against Women, Article 9 (2)

14 1989 Convention on the Rights of the Child, Article 3

15 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012 (hereinafter UNHCR Statelessness Guidelines 4); Council of Europe, *Recommendation CM/Rec(2009)13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009

# III. National legal framework

## III.1 General framework: Obtaining nationality at birth

The current regulatory framework of the acquisition and loss of nationality is set by Act LV of 1993 on Citizenship (hereinafter Citizenship Act). Hungarian nationality law is primarily based on the *jus sanguinis* principle, which is even declared by the country's Fundamental Law (Constitution).<sup>16</sup> Nonetheless, *jus soli* is also evoked in some specific cases, in order to prevent statelessness at birth. The following categories of children become Hungarian citizens automatically at birth:

- Children born to at least one Hungarian parent (regardless of the place of birth, the sex of the parent and whether the child was born in or out of wedlock);<sup>17</sup>
- Children born in Hungary, whose both parents are stateless and have a domicile in Hungary;<sup>18</sup>
- Children of unknown parents found in Hungary (“foundlings”).<sup>19</sup>

According to the position of the Hungarian Ministry of Public Administration and Justice, provisions in law relating to foundlings are applicable until the age of 18 years.<sup>20</sup>

A child born in Hungary who does not obtain the nationality of either of her/his parents at birth is entitled to later become a Hungarian citizen by **declaration** (*nyilatkozat*). The recognition of Hungarian nationality is **non-discretionary** in such cases, provided the **child's parents had a domicile** in Hungary at the time of the birth and that the child has been residing in Hungary (with a domicile) for **at least 5 years**. This option is open **until the child's 19<sup>th</sup> birthday**.<sup>21</sup> Unlike in the case of naturalisation (see below), the Office of Immigration and Nationality (OIN) issues a motivated decision about the rejection of “accepting a declaration” (if the conditions are not fulfilled). Legal remedy can be sought before the Metropolitan Administrative and Labour Law Court (*Fővárosi Közigazgatási és Munkaügyi Bíróság*).<sup>22</sup>

Persons born in Hungary, as well as stateless persons in general can apply for **naturalisation** after continuously residing in Hungary with a **domicile**<sup>23</sup> for a minimum of **3 years**.<sup>24</sup> This constitutes favourable treatment as compared to the general rule, which requires a minimum of 8 years of residence with a domicile. In all other aspects, the general conditions apply to applicants for naturalisation who were born in Hungary or who are stateless:

- She/he has no criminal record and there are no pending criminal proceedings against her/him;
- Her/his livelihood and accommodation are ensured;<sup>25</sup>
- Her/his naturalisation does not constitute a harm to national or public security;
- She/he has successfully passed an examination on “constitutional studies” or is exempted by this requirement by law.<sup>26</sup>

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16 Promulgated on 25 April 2011

17 The Fundamental Law of Hungary, 25 April 2011, Section G (1)

18 Citizenship Act, Section 3 (3) (a) – See more about the gaps of this provision and the restrictive concept of “domicile” in Hungarian law in Chapter IV.1.

19 Citizenship Act, Section 3 (3) (b)

20 Note that the term “foundling” reads as “found child born to unknown parents” (*ismeretlen szülőktől származó talált gyermek*) in Hungarian laws. Since the word “child” is part of this term and the Hungarian Civil Code (Act IV of 1959, Section 12) defines a child as a person under 18 years of age, there are no legal grounds for a more restrictive interpretation. See also letter No. 437-3068/2/2013 of 7 December 2013 of the Ministry of Public Administration and Justice to the UNHCR Regional Representation for Central Europe.

21 Citizenship Act, Sections 5/A (1) (b) and 5/A (1a), introduced by Sections 53 (1)–(2) of Act CCVII of 2012

22 Citizenship Act, Section 5/A (3)

23 See more about the restrictive concept of “domicile” in Hungarian law (which in practice prolongs the minimum waiting time for most applicants) in Chapter IV.1.

24 Citizenship Act, Section 4 (2) (e) – Until 31 December 2013, the waiting period for stateless persons was 5 years.

25 Note that neither law, nor public guidance set any material standard for the assessment of these criteria.

26 Children, together with some other categories are exempted by Section 4/A (2) of the Citizenship Act.

In Hungary, **decisions on naturalisation are not motivated** (i.e. rejected applicants are not informed about the grounds for rejection) and there is **no possibility to seek legal remedy** against negative decisions, neither through administrative appeal, nor via judicial review.<sup>27</sup> Naturalisation is not considered an administrative procedure under Hungarian law, and as such, does not fall under the scope of general rules concerning administrative procedures.

It is also noteworthy that **foreign or stateless children adopted by a Hungarian national do not automatically obtain Hungarian nationality**, but can apply for it after 3 years of residence in the country.<sup>28</sup> However, for this they shall fulfil all the above-mentioned general conditions for naturalisation and the decision is of a strongly discretionary character.<sup>29</sup>

## III.2 General framework: Birth registration and nationality

The general framework of birth registration in Hungary is set by Law-Decree 17 of 1982 on Civil Registration, Marriage and Names and Decree 6/2003 of 7 March of the Minister of the Interior on Civil Registration, Marriage and Names. The Law-Decree will be succeeded by Act I of 2010 on Civil Registration Procedures, entering into force on 1 July 2014. This major change in the legislative framework will, nevertheless, not affect the rules relevant to the establishment and registration of nationality.

The main relevant characteristics of the Hungarian birth registration system can be summarised as follows:

- All children born in Hungary shall be registered at birth;<sup>30</sup>
- The fact of birth shall be announced within one day of the delivery to the civil registry authority by the head of the hospital where the birth took place;<sup>31</sup> or the specifically trained medical person assisting the birth, if it took place outside a hospital;<sup>32</sup>
- The civil registration authority **shall examine the child's nationality at birth**;<sup>33</sup>
- If the child's nationality or statelessness is not proven, **"unknown nationality"** shall be noted in the civil registry (and on the birth certificate, as a remark);<sup>34</sup>
- There are no specific rules in place regarding birth registration or the establishment of nationality in case of children born to refugees or other beneficiaries of international protection.<sup>35</sup>

Due to these rules, **children born to non-Hungarian parents are regularly registered at birth as being of unknown nationality**. If a child acquires a nationality through *jus sanguinis*, this fact needs to be first confirmed by documentary evidence (e.g. any proof issued by the competent consular authority). If a child is born stateless, this fact will have to be established in a statelessness determination procedure conducted by the Office of Immigration and Nationality. Both types of proceedings require a certain amount of time. It is therefore extremely unlikely that the evidence proving the child's non-Hungarian nationality or statelessness will be available when her/his birth is registered.

27 Upon accession, the country made reservations with regard to the relevant Articles 11 and 12 of the 1997 European Convention on Nationality.

28 Either based on their statelessness (Citizenship Act, Section 4 (2) (e)), if relevant, or the fact of being adopted by a Hungarian national (Citizenship Act, Section 4 (2) (c))

29 Citizenship Act, Section 4 (2) (c)

30 Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 1 (2) (a); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 1 (3) (a)

31 Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 9 (2); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 61 (3)

32 Government Decree 35/2011 of 21 March on the rules, conditions of and exclusion grounds from birth outside a medical institution, Section 12 (6)

33 Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 13 (1); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 16 (1)

34 Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 13 (4); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 16 (4)

35 For the purposes of this study the term "beneficiaries of international protection" will encompass refugees, beneficiaries of a subsidiary protection (*oltalmazott*) status and those with a tolerated (*befogadott*) status.

The yearly figures of children registered as of unknown nationality at birth indicate **a relatively significant population:**

2010	2011	2012
272	261	289

At the same time, it is unknown (even to the ministry in charge of civil registration) what happens in these cases after birth registration and whether any nationality is established in the following months or years.

It is noteworthy that in many states, unlike in Hungary, birth registration is procedurally separated from the establishment of nationality. This option is also favoured by the UNHCR, which is of the opinion that

*It is not desirable that birth certificates include information about the child's nationality, because civil registration authorities will not always be competent to determine the child's nationality at birth (in particular where one or both parents are foreigners).<sup>37</sup>*

The gaps and difficulties of the regulation in force will be explored in detail in Chapter IV.

### III.3 Recent improvements

In 2010, both the Parliamentary Commissioner for Civil Rights<sup>38</sup> and the Hungarian Helsinki Committee<sup>39</sup> criticised the Hungarian practice concerning the acquisition of nationality of **children born in a hospital to an unknown father and a foreign national mother who is “known”, but whose identity and nationality is not officially established, and who disappears and leaves the child behind in the hospital shortly after birth.** Under the previous practice, these children were not considered as foundlings and therefore did not obtain Hungarian nationality at birth. The mother's identity and nationality was often registered in the hospital registry based on verbally communicated data, without any guarantee of the data being genuine. The problems faced by these children, treated as being of unknown nationality, were numerous, from exclusion from childcare services and the possibility of being adopted, to an undesirable “repatriation” to the mother's country of nationality, when it was finally established, sometimes only years later.

In light of strong criticism and a number of mediatised cases, the following provision was introduced into the relevant legislative act in order to **remedy the situation in 2011:**

*If the mother did not prove her identity upon giving birth, nor within 30 days following the birth, and abandons the child in the institution [where the birth took place], the child shall be considered a foundling.<sup>40</sup>*

This positive step shows a good example of how to apply foundling provisions and related safeguards existing in international legal instruments and domestic law in a flexible and effective manner, with due regard to the child's best interests. The legislative framework has been created to prevent the risk of statelessness and numerous other human rights violations for this particular group, by ensuring **immediate access to Hungarian nationality**, rather than several years of an unstable legal situation. Nevertheless, at the time of writing there is no information available about the practical use and impact of this recently adopted provision, the application of which thus remains to be closely monitored.

36 Source: Letter No. 437-3068/2/2013 of 7 December 2013 of the Ministry of Public Administration and Justice to the UNHCR Regional Representation for Central Europe

37 UN High Commissioner for Refugees (UNHCR), Child Protection Issue Brief: Birth Registration, August 2013, p. 4

38 Parliamentary Commissioner for Civil Rights, Report on cases no. AJB 2629/2010 and AJB 4196/2010, September 2010

39 See among others Hungarian Helsinki Committee (Gábor Gyulai), Statelessness in Hungary – The protection of stateless persons and the prevention of reduction of statelessness, December 2010, pp. 43–46

40 Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 9 (7), as inserted by Section 1 (4) of Act XLIX of 2011 and amended by Section 78 (3) of Act XCII of 2011. Note that Section 61 (5) of Act I of 2010 on Civil Registration Procedures (entering into force on 1 July 2014) contains an identical provision.

# IV. Gaps in safeguards and groups of concern

Notwithstanding the existence of safeguards against statelessness at birth in Hungarian law and some important positive developments in recent years, **the system is far from fully ensuring the effective prevention of statelessness** in case of children born in Hungary. This chapter outlines the main gaps in the legal framework and identifies the groups at risk.

Hungary shall – in light of its international obligations summarised in Chapter II – grant its nationality to children who “would otherwise be stateless”.<sup>41</sup> As for **foundlings**, Hungarian legislation provides **sufficient safeguards in line with the country’s international obligations**<sup>42</sup> since the amendments presented in Chapter III.3 entered into force.

As for those cases not falling under the scope of the foundling provisions of the relevant treaties, Hungary’s international obligations offer two avenues for avoiding statelessness, namely granting nationality

- 1) either at birth, *ex lege*;
- 2) or subsequently, to children who remained stateless, upon application.<sup>43</sup>

Hungarian law **does not establish a general safety net against statelessness at birth** (according to which *any* child who would otherwise be stateless would automatically acquire the country’s nationality at birth).<sup>44</sup> Instead, Hungarian law has adopted the second scenario as a general framework for fulfilling its relevant international obligations. To this end, the possibility of acquiring nationality by **declaration** has been created.<sup>45</sup> However, the rules and conditions relating to this procedure are **in breach of Hungary’s international obligations**, as summarised in the following table:

Conditions required under Hungarian law	Conditions allowed by international obligations
The parents must have a domicile <sup>46</sup> when the child is born <sup>47</sup>	No condition relating to the legal status of the parents or the child is allowed <sup>48</sup>
5 years of residence with a domicile <sup>49</sup>	5 years of habitual residence (habitual residence being a matter of fact, rather than legal status) <sup>50</sup>
Option open until the 19 <sup>th</sup> birthday of the person concerned <sup>51</sup>	It should be open until the 21 <sup>st</sup> birthday of the person concerned <sup>52</sup>

**Consequently, the mere possibility of acquiring Hungarian nationality through a non-discretionary declaration process does not constitute a sufficient safeguard for the prevention of statelessness, as many of those children who would be entitled to benefit from automatic access to Hungarian nationality at birth or non-discretionary access subsequently, under a few, strictly defined conditions, cannot do so.** Research for this report has identified three groups of concern, presented in the forthcoming chapters.

41 In the sense of Article 1 (1) of the 1961 Convention on the Reduction of Statelessness

42 1997 European Convention on Nationality, Article 6 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 2

43 See Chapter II

44 The first scenario is only applied in case of children born to stateless parents, with serious restrictions, which will be presented in Chapter IV.1

45 See Chapter III.1

46 Domicile is a restrictive legal concept which will be explained in detail in Chapter IV.1

47 Citizenship Act, Section 5/A (1) (b)

48 See 1997 European Convention on Nationality, Article 6 (2) (b); together with 1961 Convention on the Reduction of Statelessness, Article 1 (2)

49 Citizenship Act, Section 5/A (1) (b)

50 See 1997 European Convention on Nationality, Article 6 (2) (b); together with 1961 Convention on the Reduction of Statelessness, Article 1 (2)

51 Citizenship Act, Section 5/A (1a)

52 1961 Convention on the Reduction of Statelessness, Article 1 (2) (a)

## IV.1 Group 1: Children of stateless parents with no domicile

In a predominantly *jus sanguinis* context statelessness may easily become an enduring, trans-generational phenomenon. Aware of this danger, Hungarian legislation includes a provision according to which **children born to stateless persons with a domicile in Hungary automatically obtain Hungarian nationality at birth**.<sup>53</sup> While this provision may look satisfactory on the surface, in reality it does not ensure compliance with relevant international obligations. The legal concept of **domicile**<sup>54</sup> (*lakóhely*) is far more under Hungarian law than a simple determination of where a person lives. Different rules in force distinguish three different types of residence: domicile, place of stay (*tartózkodási hely*) and place of accommodation (*szálláshely*) – with gradually decreasing attachment (for example in time) to the place in question.<sup>55</sup> Not all lawfully staying foreigners are permitted to register a domicile; Hungarian regulation limits this possibility to certain groups, while others are excluded. With regard to the application of the domicile concept, Hungarian law defines the following two categories:<sup>56</sup>

Can register a domicile	Cannot register a domicile
Citizens of the European Economic Area (EEA) <sup>57</sup> and their family members (including their third-country national family members)	Third-country nationals with a humanitarian residence permit, including those recognised as stateless persons and beneficiaries of a tolerated ( <i>befogadott</i> ) status <sup>58</sup>
Third-country national family members of Hungarian nationals	
Third-country nationals with a permanent resident status <sup>59</sup>	Third-country nationals holding a non-permanent residence permit on grounds of employment, studies, research, family unity, etc. <sup>60</sup>
Refugees and beneficiaries of subsidiary protection <sup>61</sup>	

In consequence, **children born to stateless parents who do not have a domicile in Hungary will be born stateless**, even if the parents are lawfully and habitually residing in Hungary at the time of the birth. It is particularly worrisome and absurd that **children born to parents having a stateless status in Hungary cannot benefit from the relevant provision either** and will consequently be born and remain stateless after birth. The same happens to children whose stateless parents have a residence permit based on employment or studies, or who hold a tolerated (*befogadott*) status. On the other hand, children of stateless refugees or stateless parents who already hold a permanent residence permit will become Hungarian nationals at birth.

The possibility of obtaining Hungarian nationality through declaration<sup>62</sup> has been created with a view to fulfil the country's relevant international obligations also in cases similar to the scenario in focus.<sup>63</sup> Nevertheless, as the children concerned and their parents **do not have a domicile** in Hungary, they will also be **excluded from the scope of the provision allowing for a later acquisition of nationality through declaration**.

53 Citizenship Act, Section 3 (3) (a)

54 Sometimes also translated into English as “place of residence”

55 See for example Act LXVI of 1992 on the Registration of Citizens' Personal Data and Residence

56 Citizenship Act, Section 23 (1); Act LXVI of 1992 on the Registration of Citizens' Personal Data and Residence, Section 4 (1)

57 The European Economic Area (EEA) includes the European Union, Iceland, Liechtenstein and Norway. Domicile is registered by the authorities on the basis of a registration certificate, residence card or permanent residence card issued by the Office of Immigration and Nationality (see Sections 21, 22 and 24 of Act I of 2007 on the Entry and Stay of Persons Enjoying the Right of Free Movement).

58 See Act II of 2007 on the entry and stay of third-country nationals, Sections 29 (1) (a)-(b), 52/A (1)

59 This category covers third-country nationals holding various types of permanent residence permits. Third-country (non-EEA) nationals in Hungary can apply for a so-called “national permanent residence permit” (*nemzeti letelepedési engedély*) after 3 years of continuous residence and an “EC permanent residence permit” (*EK letelepedési engedély*) after 5 years of continuous residence. A number of strict material conditions shall be fulfilled for obtaining any of these permits, and only the second one provides the rights attached to free movement within the European Union. This category also includes those with an “interim permanent residence permit” (*ideiglenes letelepedési engedély*), as well as persons holding a permanent residence permit based on the regulation in force prior to 2007 (the so-called *bevándorolt* status). Cf. Act II of 2007 on the entry and stay of third-country nationals, Section 32 (1).

60 See Act II of 2007 on the entry and stay of third-country nationals, Sections 13-29

61 Cf. Act LXXX of 2007 on Asylum, Section 17 (1)

62 See Chapter III.1

63 See earlier in this chapter

The possibility of naturalisation<sup>64</sup> does not offer a solution for this gap in line with Hungary's international obligations since:

- A number of strict material conditions are to be fulfilled, therefore the acquisition of nationality is not automatic;
- The decision on naturalisation claims is a discretionary one, and rejected applicants have no right to be informed about the reasons of the rejection, nor are they entitled to appeal the decision.

In summary, children born to stateless parents who remain stateless at birth **have no possibility to access Hungarian nationality in a non-discretionary manner after a maximum of 5 years of habitual residence, as it would be required by the country's international obligations.** In addition, the **restrictive use of the domicile concept** as a condition for the avoidance of statelessness at birth leads to **discrimination.** The situation of a child born to stateless parents who have been living in Hungary for several years with a stateless status (and therefore without a domicile) is no different from another child whose parents have been living in the country for exactly the same period of time, but with a permanent residence permit or refugee status. Both families are lawfully and habitually residing in Hungary and neither of them is able to transmit a nationality to their children. In addition, international obligations<sup>65</sup> as well as the relevant Hungarian law<sup>66</sup> set the avoidance of statelessness as a general, overarching objective, which – due to its general nature – does not allow for a disadvantageous treatment on the basis of not having a permanent resident status, for instance. Also, it would be impossible to imagine any practical justification for such a differentiated treatment. On the other hand, the impact of this discriminatory differentiation is grave on the children concerned, as their nationality, legal status and access to rights and services will be seriously affected in the long run. The following real cases – identified for this research by the author – well demonstrate this problem.

*Samir was born in 2013 in Hungary, his parents are stateless Palestinians. His father has been living in Hungary since 2010 with an officially recognised stateless status. His mother arrived in Hungary in 2013 and has a residence permit on the grounds of family unity. She has a travel document issued by Egypt for Palestinians. They got married in Libya, their nationality is marked as Palestinian on the official marriage certificate. Hungary accepted all these documents as authentic when allowing for the issuance of the mother's residence permit. In addition, she has a pending asylum claim at the time of writing. Neither the humanitarian residence permit of Samir's father (issued on the grounds of his stateless status), nor the residence permit of his mother (issued on the grounds of family union) allow for the establishment of a domicile in Hungary, even if they both lawfully and habitually live in Hungary and have no prospect of settling elsewhere. Samir was born stateless. Nevertheless, as his parents do not have a domicile in Hungary, he could not benefit from the relevant safeguard for the prevention of statelessness in the Citizenship Act and did not acquire Hungarian nationality at birth. Instead, he was registered as being of unknown nationality.*

*Leila was born in 2010 in Hungary, her parents are stateless Palestinians. Both of Leila's parents have refugee status and therefore also a domicile in Hungary. Consequently, Leila acquired Hungarian nationality at birth, since as a child of two stateless parents with a domicile, she could benefit from the relevant prevention safeguard of the Citizenship Act.*

*Both Samir and Leila were born to undoubtedly stateless, lawfully and habitually residing parents in Hungary. Both children "would otherwise be stateless" in the sense of Article 1 (1) of the 1961 Convention on the Reduction of Statelessness and "they do not acquire at birth another nationality" in the sense of Article 6 (2) the 1997 European Convention on Nationality. Samir's and Leila's situation are entirely comparable with regard to the lack of nationality and the need for legal safeguards for the avoidance of statelessness. The distinction based on the parents' domicile is therefore unreasonable and discriminatory. In addition, Samir's mother is referred to on the birth certificate as "of Palestinian nationality", while Leila's parents are "stateless nationals". The use of such senseless terminology may further indicate a gap in knowledge and awareness.*

64 See Chapter III.1

65 1997 European Convention on Nationality, Section 4 (b)

66 See the preamble of the Citizenship Act

In 2009, a report by the Parliamentary Commissioner for Civil Rights (hereinafter Ombudsperson)<sup>67</sup> shed light on another shortcoming that may endanger the proper application of the prevention safeguard in question, even when both parents have a domicile. Section 18 (4) of the Decree 6/2003 of 7 March of the Minister of the Interior stipulates that the civil registration authority shall obtain a confirmation of the parents' statelessness from the Office of Immigration and Nationality (OIN). The individual complaint observed by the Ombudsperson concerned the fourth child born in Hungary to two former Afghan citizens who had lost their nationality through renunciation. Both parents presented a genuine proof of their statelessness and domicile (their Hungarian identity and domicile cards) in the new-born child's civil registration process, which – in the view of the Ombudsperson – should have led to the automatic application of the previously presented prevention safeguard (as it had happened in the case of the couple's first three children). Instead, the civil registration authority contacted the OIN and the latter cast doubt on the parents' previously recognised statelessness, based on the statement that “it is not typical that countries applying Islamic law allow for the renunciation of nationality”. As a result, the child was registered as of unknown nationality and his nationality was still under investigation a year after his birth, even though meanwhile the OIN obtained official information that confirmed that the parents' renunciation of their Afghan nationality was lawful under the country's national law. The Ombudsperson concluded that the law was wrongfully applied, in breach of the relevant prevention safeguard of the Citizenship Act, the rule of law and children's rights provisions of the Constitution then in force, as well as Hungary's international obligations with regard to respect to the best interests of the child. The Ombudsperson was of the opinion that **the civil registration authority's general obligation to contact the OIN and obtain a confirmation of the parents' statelessness was unnecessary**, as in several cases (like the one in the observation) the relevant proof is already presented at birth. It was also pointed out that **when the statelessness of a person is established by an administrative decision in force, this fact cannot be doubted in a civil registration process**. Consequently, the Ombudsperson recommended that Section 18 (4) of the Decree 6/2003 of 7 March of the Minister of the Interior should be deleted. This has not happened by the time of writing.

## IV.2 Group 2: Children of parents who cannot confer their nationality to them

Not only stateless parents' children are at risk of statelessness at birth in Hungary. As explained in Chapter III.1, Hungarian citizenship law does not contain a general “safety net” against statelessness at birth, where *any* child would automatically become a Hungarian national at birth if otherwise she/he would become stateless.<sup>68</sup> There appears to be an implicit presumption behind Hungarian nationality rules according to which children obtain their parents' nationality, this concept being undoubtedly influenced by the country's strong *jus sanguinis* traditions. In reality though, **several countries' nationality rules fail to ensure that all children born to its citizens abroad inherit their parents' nationality**. This may happen for two main reasons:

- 1) **Sex discrimination in nationality laws:** Notwithstanding positive legislative developments in various states in recent years, there are still a considerable number of countries – especially in the Middle East and Africa – that do not allow mothers to pass on their nationality to their child under the same conditions as fathers. At the time of writing, the UNHCR reports 29 such countries, among which there are 7 which do not allow mothers to confer their nationality to their children with no – or very limited – exceptions.<sup>69</sup> This means that a child born for instance to an Iranian, Lebanese, Syrian or Somali mother and a stateless or unknown<sup>70</sup> father will be born stateless in Hungary.

<sup>67</sup> Parliamentary Commissioner for Civil Rights, Report no. AJB 4713/2009, December 2009

<sup>68</sup> Such a general “safety net” at birth is included in the Italian and French nationality rules, for example

<sup>69</sup> UN High Commissioner for Refugees (UNHCR), Revised Background Note on Gender Equality, Nationality Laws and Statelessness, 8 March 2013

<sup>70</sup> Note that in practice “unknown” may cover far more situations than those where the identity of the father is actually unknown. Such cases may also include situations where the parents are unmarried and the father refuses to recognise his parenthood or had disappeared by the time the child was born, etc.

- 2) **The application of the *jus soli* principle:** The vast majority of states in the Americas (and a very few other countries) apply *jus soli* as the predominant principle of acquiring nationality at birth. Most of these states have enacted *jus sanguinis* rules automatically recognising as citizens (or allowing for a non-discretionary registration) children born outside their territory to at least one parent who is a national. However, in some states the safety net does not cover all cases. Some countries require children born abroad to reside in the country for a certain amount of time before their nationality is recognised. For example, a child born in Hungary to Chilean parents will become stateless at birth.<sup>71</sup>

In this scenario, as in the previous one (see Chapter IV.1), naturalisation cannot be considered as a solution in line with Hungary's international obligations due to its discretionary character and strict material conditions. Obtaining nationality through the non-discretionary process of declaration can, in some cases, provide a solution; however – as in the previous scenario – **the restrictive application of the concept of domicile excludes an important part of those in need.** Parents in question – falling under the scope of the rules applicable to third-country nationals – will only be able to establish a domicile in Hungary if they have already obtained a permanent resident status, subject to several strict material conditions, or if they are refugees or beneficiaries of subsidiary protection.<sup>72</sup> While the actual impact of this gap is **likely to be of a very limited scope** (affecting only exceptional cases), it still highlights a conceptual shortcoming in the legislative framework, resulting in the breach of Hungary's international obligations.<sup>73</sup>

### IV.3 Group 3: Children of beneficiaries of international protection

As presented in Chapter III.2, Hungarian civil registry authorities are obliged to examine a new-born child's nationality, and **if the child's Hungarian or foreign nationality or statelessness is not proven, unknown nationality will be registered.** This rule modified previous practice, according to which the parents' nationality was registered for the child as well.<sup>74</sup> Allowing the competent authorities to establish a child's actual nationality (current practice) instead of merely registering one presumed on the basis of the parents' country of origin (previous practice) is definitely an important step forward. However, the current rule presupposes that non-stateless parents (or childcare authorities in exceptional cases) will *as a general rule* be able to obtain evidence about the child's foreign nationality in due course, and thus unknown nationality will only be a temporary entry in the civil registry and the risk of statelessness is eliminated.<sup>75</sup> **Most non-stateless migrants living in Hungary can be reasonably expected to take the necessary steps (for example by contacting consular authorities) to establish and register the nationality of their children after birth.** Nevertheless, the current legal framework disregards the existence of cases where this scenario is not viable. The situation where the country of origin has legal provisions that do not allow nationals to pass on their nationality to their children under certain circumstances has already been presented in Chapter IV.2. Besides these legally clear-cut cases **children born to beneficiaries of international protection**<sup>76</sup> also represent a more complex and equally serious challenge.<sup>77</sup>

Beneficiaries of international protection have a well-founded reason for not contacting the authorities of their country of origin. Such an act, on one hand, may expose them to a risk of persecution or serious harm, while on the other hand, it

71 The child will only obtain Chilean nationality if she/he resides for at least one year in Chile. See *Constitución Política de la República de Chile*, 21 October 1980, Section 10 (3).

72 About the reasons and the legal framework, see Chapter IV.1

73 See earlier in Chapter IV

74 Until 14 December 2002, the relevant Law-Decree did not contain any specific guidance for cases where the new-born child's nationality was not proven (e.g. neither of the parents was a Hungarian citizen, etc.). Based on anecdotal information and data gathered from individual cases known to the author, it appears that the practice was to register children automatically as having the same nationality as their parents.

75 Cf. with the summary of the relevant regulation in Chapter III.2

76 For the purposes of this study, the term "beneficiaries of international protection" encompasses refugees, beneficiaries of a subsidiary protection (*oltalmazott*) status and those with a tolerated (*befogadott*) status. While the three statuses significantly differ with regard to rights and social conditions, they share crucial characteristics relevant for this study, such as the inability to return to one's country of origin, as well the impossibility to contact its authorities for major human rights-related reasons.

77 Note that some children born to beneficiaries of international protection may also fall under Group 2 (Chapter IV.2), for example, a child born to a Somali refugee mother and a stateless or unknown father will be stateless because of the discriminatory law of the country of origin in a first place.

may also lead to the cancellation of their protection status. In consequence, beneficiaries of international protection often **will not be able to register their children by contacting the consular authorities of their country of origin**. As also emphasised by UNHCR guidance, two different scenarios may apply in these cases:

- **Group 3/A: If the transmission of nationality to children born abroad is not automatic**, but subject to any condition that requires contact with the authorities of the country of origin, the child will not be able to acquire her/his parents' nationality. This is inevitable, due to the very nature of international protection (see above), even if the required action is a mere registration where the country of origin has no discretion to reject the claim. The children concerned are therefore **stateless** under the definition of the 1954 Convention relating to the Status of Stateless Persons, and the relevant safeguards under the 1961 Convention and the European Convention on Nationality apply.<sup>78</sup>
- **Group 3/B: If the transmission of nationality to children born abroad is automatic**, the child will *as a matter of legal principle* acquire her/his parents' nationality at birth. However, it will usually be impossible to translate this legal fact into actual protection and documentation by the country of origin, due to the above-presented impossibility to contact the state in question. The latter is unlikely to even know about the birth and the existence of its "citizen". Persons in such situations are viewed by many and may be referred to as **de facto stateless**.<sup>79</sup> This term has, however, never been defined in an international legal instrument and only non-binding recommendations exist for a similar treatment for *de facto* and *de jure* stateless persons.<sup>80</sup> The language used by the 1954 Convention's definition of a stateless person ("considered", "under the *operation* of its law") suggests that statelessness may also arise from the activity or non-activity of state authorities, not only the text of the law. The UNHCR is of the view that

*16. Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual's case in practice and any review/appeal decisions that may have had an impact on the individual's status. This is a mixed question of fact and law.*

*17. Applying this approach of examining an individual's position in practice may lead to a different conclusion than one derived from a purely objective analysis of the application of nationality laws of a country to an individual's case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance. The reference to "law" in the definition of statelessness in Article 1 (1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.<sup>81</sup>*

In light of this it is also correct to say that these children of beneficiaries of international protection are also **at risk of statelessness**, since a state that persecutes certain of its citizens (or tolerates their persecution) *may* be reluctant to recognise, under the actual *operation* of its law, the nationality of these citizens' children born abroad. An enduring lack of contact with the state in question for the above-stated reasons may further increase this risk. Certainly, the actual difficulties refugee children face when trying to obtain documentary evidence of, or exercise rights related to their nationality existing "according to the law in the books" will vary significantly from case to case, depending on the individual circumstances and the practices of the country of origin.

In this scenario, as in the previous ones (see Chapters IV.1 and IV.2), naturalisation cannot be considered as a solution in line with Hungary's international obligations due to its discretionary character and strict material conditions. Obtaining nationality through the non-discretionary process of declaration may provide a solution for Group 3/A; however – as in

<sup>78</sup> See Chapter II; UNHCR Statelessness Guidelines 4, Para. 27

<sup>79</sup> Cf. UNHCR Statelessness Guidelines 4, Para. 28; UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012, Para. 8; UN High Commissioner for Refugees (UNHCR), *Expert Meeting – The Concept of Stateless Persons under International Law ("Prato Conclusions")*, May 2010, Chapter II

<sup>80</sup> See the Final Act of the 1954 Convention relating to the Status of Stateless Persons; the Final Act of the 1961 Convention on the Reduction of Statelessness, Resolution I; Council of Europe Parliamentary Assembly Recommendation 696 (1973) on certain aspects of the acquisition of nationality, Articles 6 and 11 (b); as well as Council of Europe Committee of Ministers Recommendation CM/Rec(2009)13 on the nationality of children, Article 7

<sup>81</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012, Paras 16–17

the previous cases – **the restrictive application of the concept of domicile excludes an important part of those in need.** Parents in question only have a domicile in Hungary at the time of birth (being non-EU-nationals) if they have already been granted refugee or subsidiary protection (*oltalmazott*) status. **If they have a tolerated (*befogadott*) status or are still in an asylum procedure, they are not allowed to establish a domicile**, and in such cases the child will be unable to make use of this safeguard in the Citizenship Act. In addition, it is not guaranteed even if the parents have a domicile at the time of the birth that the child will continuously have a domicile in Hungary for the following 5 years (for example, the parents’ subsidiary protection status may cease and the family may be granted tolerated status, not allowing for the establishment of a domicile).<sup>82</sup>

According to the experience of refugee-assisting civil society organisations (such as the Hungarian Helsinki Committee and the Menedék Association for Migrants) **the children born in Hungary to beneficiaries of international protection are always registered as being of unknown nationality and they hardly have any prospect of changing this condition**, not even in several years. The impact of the above-described unfavourable legal framework is aggravated by a number of additional circumstances:

- It is a long-standing general trend that an important part (often the majority) of asylum-seekers receiving international protection in Hungary comes from countries undergoing **a grave and permanent conflict situation, which leads to severe dysfunctions in state administration and law enforcement.** These countries (such as Afghanistan, Somalia or previously Iraq) are often referred to as “failed states”.<sup>83</sup> Those registered with an **unknown nationality** also constitute one of the major “nationality categories” year by year.

**Table 2 – Beneficiaries of international protection of certain nationalities in Hungary<sup>84</sup>**

Nationality	2010	2011	2012	2013
Afghanistan	118	88	175	86
Somalia	42	5	58	50
Unknown nationality	14	18	29	23
<i>All beneficiaries</i>	<i>247</i>	<i>156</i>	<i>350</i>	<i>360</i>
<i>Nationals of states with a grave and permanent conflict situation and persons of unknown nationality, percentage of all beneficiaries</i>	<i>70.5%</i>	<i>71.2%</i>	<i>74.9%</i>	<i>44,2%</i>

The enduring conflict in the countries in question, the decades-long, extreme dysfunctions of these states, as well as in cases of unknown nationality the lack of an established nationality render unrealistic any prompt prospect of voluntary return and thus the proper registration and “activation” of the nationality of the children born in Hungary (which would be the preferred option in many cases).<sup>85</sup> Moreover, these factors question whether any attempt to register children born abroad could at all be successful in a realistic time-frame (for the mere lack of competent consular authorities, etc.). In consequence, **obtaining Hungarian citizenship may often seem to be the only solution** for these children to avoid an enduring state of “unknown nationality” and the risk of statelessness.

82 About the reasons and the legal framework see Chapter IV.1

83 The discussion of the complex and often debated notion of failed states falls beyond the scope of this study. Nevertheless, it has been considered a useful concept to highlight certain *specific* difficulties refugees from the countries in question may face when trying to establish, document, etc. their children’s nationality, as it will be explained in the following.

84 Source: Office of Immigration and Nationality – Note that there are no publicly available statistics about additional recognitions by courts conducting the judicial review of administrative decisions on asylum. While these additional decisions constitute an important amount in recent years, the nationality trends are not significantly different from first-instance decision-making.

85 For comparison, in cases where conflicts leading to refugee flows are of a less enduring nature, many children born to refugees and registered with an unknown nationality will – at some point – be able to return with their families to the country of origin once the conflict is settled, and thus they may be able to properly register with functioning state authorities their nationality, and obtain documentary evidence thereof within a reasonable time-frame.

- **State authorities may not perceive most children concerned as not having obtained any nationality at birth**, as merely looking at the legislation of the country of origin they inherit their parents’ – or at least the father’s – nationality (they belong to Group 3/B above). In consequence, they **cannot benefit from the declaration safeguard** of the Citizenship Act,<sup>86</sup> even if later it turns out that the state of presumed nationality does not *consider* them as nationals under the *operation* of its law.
- As noted in Chapter III.1, **the naturalisation procedure in Hungary lacks even the most basic fair procedure safeguards**, as decisions are not motivated and there are no appeal or judicial review possibilities whatsoever.<sup>87</sup> The lack of transparency in decision-making coupled with strict and discretionary material conditions lead to a situation where beneficiaries of international protection (including their children) are **hardly able to successfully naturalise in Hungary**. Refugee-assisting civil society organisations regularly encounter cases where applicants with an international protection status are rejected without any apparent reasonable justification (they have no criminal record, they have successfully passed the necessary examination, they have a standard of living and accommodation that correspond to the Hungarian average, or are even better, etc.). Unfortunately, the Office of Immigration and Nationality does not keep statistics in specific breakdowns about the naturalisation of foreigners with an international protection status, however it is quite telling that in recent years very few foreigners managed to obtain Hungarian citizenship whose other nationality was that of a “typical” country of origin for beneficiaries of international protection.<sup>88</sup>

**Table 3 – Successful naturalisation claims<sup>89</sup>**

Other or previous nationality of the applicant	2011	2012
Afghanistan	4	5
Iraq	0	6
Iran	7	14
Unknown nationality	2	1

While this issue is not directly related to the prevention of statelessness at birth, it clearly shows the difficulty that beneficiaries of international protection face when trying to acquire Hungarian nationality and thus helps to understand the context in which prevention safeguards should operate.

The story of the Karimi family well demonstrates these problems and can be considered as typical of families living with an international protection status in Hungary.

*Mr. Karimi is from Afghanistan and has been living in Hungary for over 15 years. Mr. Karimi is stateless. He obtained a permanent residence permit in 1997 and a stateless travel document in 1998. Ms. Karimi is a refugee of Afghan nationality. They have four children, born in 2000, 2002, 2005 and 2011. The first two children were registered at birth as Afghan citizens (automatically the mother's nationality was attributed to them without any examination of the country's nationality law and practices). This nationality is, however, ineffective, as the children have never been registered with the Afghan authorities, they have no proof or sign of recognition of their nationality (their mother, being a refugee, is unable to contact the authorities of her country of nationality – this may even result in the cancellation of her refugee status). The fact of being registered in official documents issued by Hungary with an*

86 Which only applies in situations where – according to the perception of the Hungarian authority in charge – the child did not obtain the nationality of any of her/his parents at birth.

87 Note also that under Hungarian law, naturalisation is not considered an administrative procedure and thus general rules applicable to such procedures do not apply to naturalisation proceedings.

88 Source: Central Statistical Office of Hungary

89 These figures include persons with diverse legal statuses in Hungary, therefore the beneficiaries of international protection who managed to naturalise in these years is supposed to be even lower (or much lower) than the data included in the table.

*ineffective nationality (the validity of which has never been checked) for over 13 and 11 years is not perceived as problematic by Hungarian authorities and has no impact on the children's legal status and naturalisation prospects. The youngest two children were born following the entry into force in 2002 of the provision that put an end to this practice; therefore they were registered as being of unknown nationality. At the time of writing (over 8 and 4 years after birth, respectively), both children are still registered as having an unknown nationality and again, this fact is not perceived as problematic by any state authority, nor has this fact any impact on their legal status.*

*The Karimi children, born to a stateless father and a refugee mother, are – as a minimum – at risk of statelessness. In addition, they were all born and raised in Hungary, speak Hungarian as their mother tongue, and Hungary is the only country with which they have a genuine and effective social, cultural, economic and legal tie. Finally, the family appears to fulfil all material conditions for naturalisation: Mr. Karimi is a successful entrepreneur, who employs 15 Hungarian nationals in his company, and the family has a standard of living that corresponds to (or is even higher than) the Hungarian average. Based on these facts, the three older Karimi children seem to be – at least – strong candidates for naturalisation. Nevertheless, their naturalisation claim has been rejected five times: in 2007, 2009 (twice), 2010 and 2013 (their parents also tried to acquire Hungarian nationality on several occasions without success). In line with the Hungarian regulation in force, these rejections were not motivated and it was impossible to lodge an appeal.*

*In this typical case, Hungary failed to ensure that children born on its territory have access to a nationality and avoid being registered as of unknown nationality for an unreasonably long period of several years. This indicates not only the lack of sufficiently inclusive mechanisms for the avoidance of statelessness in case of refugee children, but also a clear disregard to the children's best interests as stipulated by the country's international obligations.*

In summary, the avoidance of statelessness at birth for children of beneficiaries of international protection represents a more complex issue in terms of legal gaps than the previous two scenarios:

- The specific situation of these children with regard to the frequent **(im)possibility to be registered with the authorities of their parents' nationality is ignored** by the Hungarian legal framework.
- Children belonging to Group 3/A<sup>90</sup> are **born stateless, and this fact is disregarded** in the Hungarian practice, as the parents' nationality law is not consulted or considered in any manner.
- Children belonging to Group 3/B<sup>91</sup> may not be born stateless *stricto sensu*, however they may be **at risk of statelessness** and are exposed to an **enduring state of living with an undetermined nationality**. Being of unknown nationality may be considered a legal anomaly in Hungarian law, as **no specific rights or forms of protection are attached to this condition** (unlike in the case of statelessness). Both the UNHCR and the Council of Europe Committee of Ministers have suggested in their recent guidance that the period during which a new-born child is treated as being of unknown nationality should be as short as possible.<sup>92</sup> The current framework in Hungary **does not provide any guarantees** for this.
- The **declaration safeguard of the Citizenship Act does not provide a solution** to all (or not even to the majority) of those children of beneficiaries of international protection who do not acquire a nationality at birth: children who cannot fulfil the strict domicile requirement will be excluded from its scope, as well as those who are erroneously believed to have obtained a nationality by *jus sanguinis* at birth.<sup>93</sup>

90 Children of beneficiaries of international protection, where the transmission of the parents' nationality to children born abroad is not automatic, but subject to any condition that requires contact with the authorities of the country of origin.

91 Children of beneficiaries of international protection, where the transmission of the parents' nationality to children born abroad is automatic.

92 UNHCR Statelessness Guidelines 4, Para. 22; Council of Europe Committee of Ministers Recommendation CM/Rec(2009)13 on the nationality of children, Article 8

93 Note that no mechanisms (regulation, protocol, etc.) exist for the effective determination of whether or not a child born to parents having an international protection status in Hungary acquires her/his parents' nationality at birth (e.g. Hungarian law does not reflect the difference between group 3/A and 3/B).

## IV.4 Other issues of concern

Research for this report has revealed some further problematic issues, which are relevant (at least indirectly) to the issue at hand and would require changes in law and/or state practice:

- There is a **general lack of detailed statistical data concerning the access to Hungarian nationality** of certain categories of foreigners, which would be necessary in order to determine whether Hungary fulfils its relevant international obligations.<sup>94</sup> Based on the data published by the Office of Immigration and Nationality and the Central Statistical Office, it is impossible to know for example, that in a year:
  - How many beneficiaries of international protection are naturalised;
  - How many stateless persons are naturalised;
  - How many foundlings acquired Hungarian nationality at birth;
  - How many children who did not acquire any nationality at birth become Hungarian citizens by declaration and at what age;
  - How many such declarations are rejected and appealed at court; etc.
- There is also a **general lack of information** about what happens to children registered as being of **unknown nationality**. Statistics are unavailable about how many children are still of unknown nationality at a certain age (for example when starting or finishing school, or when reaching the age of 18).
- **Foreign or stateless children adopted by a Hungarian national do not automatically obtain Hungarian nationality**, but can apply for it after 3 years of residence in the country.<sup>95</sup> Under Hungarian family law, adoption accords the legal status of the biological child to the adopted child *vis-à-vis* the adoptive parent(s) and their relatives.<sup>96</sup> The biological child of a Hungarian citizen automatically acquires Hungarian nationality at birth.<sup>97</sup> Considering this fact in conjunction with Hungary's obligations regarding the avoidance of statelessness in general,<sup>98</sup> every child's right to acquire a nationality<sup>99</sup> and the best interests of the child principle,<sup>100</sup> it would be necessary to allow at least stateless children and those with an unknown nationality to automatically obtain Hungarian citizenship if adopted by a Hungarian national. Moreover, the current distinction may be considered as a form of **undue discriminatory treatment** with a harmful effect on adopted children. While its impact would be marginal in terms of numbers (adopting foreign or stateless children is not a frequent phenomenon in Hungary) such an amendment would significantly **help children in a particularly vulnerable situation to integrate into their adoptive family and new environment**.

94 1951 Convention relating to the Status of Refugees, Article 34; 1954 Convention relating to the Status of Stateless Persons, Article 32; 1961 Convention on the Reduction of Statelessness, Articles 1–2; 1989 Convention on the Rights of the Child, Articles 3 and 7; 1997 European Convention on Nationality, Article 6 (1) (b) and 6 (2)

95 See Chapter III.1

96 Act IV of 1952 on Marriage, Family and Guardianship, Section 51 (1), which will be succeeded by a similar provision in Section 4:132 (1) of Act V of 2013 on the Civil Code, following its entry into force on 15 March 2014

97 The Fundamental Law of Hungary, 25 April 2011, Section G (1)

98 1997 European Convention on Nationality, Article 4 (b)

99 1989 Convention on the Rights of the Child, Article 7; 1997 European Convention on Nationality, Article 4 (a)

100 1989 Convention on the Rights of the Child, Article 3

# V. Conclusions and recommendations

In recent years, Hungary has taken significant steps in order to improve its legal framework concerning the prevention of statelessness at birth. Nevertheless, there are still important shortcomings both in the legislative framework and the practice of authorities. The following table summarises the main gaps and groups at risk:

	Group of concern	Impact on group	Reason / gap in Hungarian law and practice	Conflict with international obligations
Group 1	Children born in Hungary to stateless persons with no domicile ( <i>lakóhely</i> )	<ul style="list-style-type: none"> <li>Children are born <b>stateless</b>, without a non-discretionary pathway to nationality in line with Hungary's international obligations;</li> <li>These children are usually <b>registered as of unknown nationality</b> and statelessness can only be established in a dedicated statelessness determination procedure.</li> </ul>	<ul style="list-style-type: none"> <li>Children born in Hungary to non-Hungarian parents acquire Hungarian nationality at birth only if the parents are stateless and have a domicile;</li> <li>Children born in Hungary who do not obtain any nationality at birth (and whose parents are not stateless) can only acquire Hungarian nationality through a non-discretionary declaration procedure if the parents had a domicile at the time of birth and if the child has been living in Hungary for at least 5 years with a domicile, and this option is only open until the 19<sup>th</sup> birthday of those concerned;</li> <li>Stateless persons are only considered to have a domicile in Hungary if they have a permanent resident status, refugee or subsidiary protection status; at the same time stateless persons with a stateless status or another non-permanent residence permit (tolerated status, work, studies, etc.) cannot establish a domicile.</li> </ul>	<p><b>In breach of Article 1 (2) (a)-(b) of the 1961 Convention on the Reduction of Statelessness and Article 6 (2) (b) of the 1997 European Convention on Nationality</b>, which in conjunction would only allow for:</p> <ul style="list-style-type: none"> <li>An <i>ex lege</i> grant of nationality at birth, without any condition regarding the legal status of parents; or</li> <li>A non-discretionary grant of nationality later, the only condition of which may be 5 years of habitual residence in the country (habitual residence being a matter of fact and not of legal status), and this option being open until at least the 21<sup>st</sup> birthday of the person concerned.</li> </ul> <p><b>In breach of Articles 3 and 7 of the 1989 Convention on the Rights of the Child</b>, which stipulate:</p> <ul style="list-style-type: none"> <li>The priority of the child's best interests in all legislative, administrative and judicial decisions; as well as</li> <li>The principle that all children have the right to acquire a nationality.</li> </ul>
Group 2	Children born to parents who are unable to pass on their nationality to their children (because of sex discrimination or <i>jus soli</i> , for instance)			
Group 3/A	Children born to beneficiaries of international protection who are unable to pass on their nationality to their children because this would require contact with the authorities of the country of origin (e.g. registration with consular authorities)			
Group 3/B	Children born to beneficiaries of international protection who – based on national law – pass on their nationality to their children, but this nationality cannot be registered in practice			

In addition to the problems summarised in the previous table, it is unreasonable that children with no established nationality do not automatically obtain Hungarian nationality upon adoption by a Hungarian citizen. This shortcoming casts doubt on Hungary's compliance with international obligations under Articles 3 and 7 the 1989 Convention on the Rights of the Child, as well as on the coherence of the regulation with the relevant rules in Hungarian family law.

In order to bridge these gaps and ensure full compliance with all relevant international obligations and guidance, the following recommendations are formulated.

■ **1<sup>st</sup> recommendation:**

The Ministry of Public Administration and Justice, in cooperation with the Office of Immigration and Nationality, is recommended to closely monitor the practical application of Section 9 (7) of Law-Decree 17 of 1982 on Civil Registration, Marriage and Names (Section 61 (5) of Act I of 2010 on Civil Registration Procedures),<sup>101</sup> collect statistical data on the application and the outcome of this provision in individual cases and make this information publicly available.

■ **2<sup>nd</sup> recommendation:**

The Ministry of Public Administration and Justice is recommended to publish and disseminate a concise, practical information note and protocol on the application of Section 9 (7) of Law-Decree 17 of 1982 on Civil Registration, Marriage and Names (Section 61 (5) of Act I of 2010 on Civil Registration Procedures) for hospitals and civil registry authorities, in order to ensure the effective and harmonised implementation of this provision in practice.

■ **3<sup>rd</sup> recommendation:**

In order to ensure full compliance with Article 1 (1)-(2) of the 1961 Convention on the Reduction of Statelessness, Article 6 (2) the 1997 European Convention on Nationality and Articles 3 and 7 of the 1989 Convention on the Rights of the Child, the domicile condition should be eliminated from Section 3 (3) (a) of the Citizenship Act, in order to allow all children born in Hungary to stateless parents to acquire Hungarian nationality *ex lege* at birth. In order to create an unambiguous norm, it is recommended that this provision is explicitly extended to children born to a stateless mother and an unknown father.

■ **4<sup>th</sup> recommendation:**

In order to ensure full compliance with Article 1 (1)-(2) of the 1961 Convention on the Reduction of Statelessness, Article 6 (2) the 1997 European Convention on Nationality and Articles 3 and 7 of the 1989 Convention on the Rights of the Child, the domicile condition should be eliminated from Section 5/A (1) (b) of the Citizenship Act. The norm should allow for a non-discretionary acquisition of Hungarian nationality by declaration *solely* with the conditions of having been born in Hungary, having habitually resided in the country for a period set by the law (see next recommendation) and not having acquired the parents' nationality at birth. Consequently, the requirement of the parents having a domicile at the time of the birth should be eliminated, and the term "have been living with a domicile" (*lakik*) should be amended to "have been habitually residing" (*szokásos tartózkodási helye*). In this provision, habitual residence should be understood – in line with Hungary's international obligations – as a matter of *fact* and not of legal status, domicile or other legal condition.

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<sup>101</sup> The provision that stipulates that if the mother did not prove her identity upon giving birth, nor within 30 days following the birth, and abandons the child in the institution where the birth took place, the child shall be considered a foundling and thus automatically acquire Hungarian nationality.

■ **5<sup>th</sup> recommendation:**

In order to ensure full compliance with Articles 3 and 7 of the 1989 Convention on the Rights of the Child, as well as with due respect to the relevant recommendations of the UNHCR,<sup>102</sup> the required time of residence before the possibility of acquiring Hungarian nationality through a non-discretionary declaration process for children who did not acquire their parents' nationality at birth should be as short as possible. In light of this principle, it is recommended that the minimum period of residence required by Section 5/A (1) (b) of the Citizenship Act be reduced from 5 years to 1 year. 1 year is a realistic maximum time-frame in which a new-born child's lack of nationality – and thus the applicability of the declaration provision – can and should be established.

■ **6<sup>th</sup> recommendation:**

In order to ensure full compliance with Articles 3 and 7 of the 1989 Convention on the Rights of the Child, as well as with due respect to the relevant recommendations of the UNHCR and the Council of Europe, concrete safeguards should be included in Hungarian legislation in order to ensure that children born in Hungary only remain registered as being of unknown nationality for the shortest possible period. One concrete state authority should be appointed as responsible for taking action in order to apply these safeguards in practice, with due regard to the child's best interests.

■ **7<sup>th</sup> recommendation:**

In order to ensure compliance with the 1961 Convention on the Reduction of Statelessness, Section 5/A (1a) of the Citizenship Act should be amended, allowing for the acquisition of Hungarian nationality through declaration until the 21<sup>st</sup> (instead of the 19<sup>th</sup>) birthday of those concerned.

■ **8<sup>th</sup> recommendation:**

Following the 2009 recommendation of the Parliamentary Commissioner for Civil Rights,<sup>103</sup> Section 18 (4) of the Decree 6/2003 of 7 March of the Minister of the Interior should be deleted. When considering the application of Section 3 (3) (a) of the Citizenship Act, civil registration authorities should only contact the Office of Immigration and Nationality for the verification of the parents' statelessness, if this fact is not already proved by official documents at the time of birth. If the parents have been recognised as stateless or have an identity or travel document which proves their statelessness, this fact should be accepted and no further inquiry is necessary until the contrary is proven.

■ **9<sup>th</sup> recommendation:**

The Ministry of Public Administration and Justice is recommended to prepare (in cooperation with the UNHCR and the Hungarian Helsinki Committee) a short multilingual information note on the automatic acquisition of nationality at birth (Section 3 (3) of the Citizenship Act) and the possibility to acquire Hungarian nationality through declaration (Section 5/A (1) (b) of the Citizenship Act), together with its conditions and procedural modalities. In order to ensure the effective prevention and reduction of statelessness, it should be mandatory for civil registration officers to hand over this information note to the parents/guardian of every child registered at birth in Hungary as of unknown nationality.

■ **10<sup>th</sup> recommendation:**

The Ministry of Public Administration and Justice is recommended to organise training sessions for civil registration officers and legal guardians (in cooperation with the UNHCR, the Hungarian Helsinki Committee and the Ministry of Human Resources) on statelessness and the avoidance of statelessness at birth, in light of Hungary's international obligations.

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102 UNHCR Statelessness Guidelines 4, Para. 34

103 Parliamentary Commissioner for Civil Rights, Report no. AJB 4713/2009, December 2009

■ **11<sup>th</sup> recommendation:**

The Office of Immigration and Nationality is recommended to keep and publish up-to-date statistics about the naturalisation claims of refugees, beneficiaries of subsidiary protection and tolerated status, as well as stateless persons, in order to demonstrate through statistical information Hungary's compliance with Article 34 of the 1951 Convention relating to the Status of Refugees, Article 32 of the 1954 Convention relating to the Status of Stateless Persons and Article 6 (4) (g) of the 1997 European Convention on Nationality. This statistical information should include data about the number of claims submitted, as well as the number of positive and negative decisions – disaggregated according to both the previous/other nationality and the legal status of the applicant.

■ **12<sup>th</sup> recommendation:**

The Office of Immigration and Nationality is recommended to keep and publish up-to-date statistics about the application of the declaration provision of Section 5/A (1) (b) of the Citizenship Act (and not just the declaration provision in general), in order to demonstrate through statistical information Hungary's compliance with Article 1 (2) (a)-(b) of the 1961 Convention on the Reduction of Statelessness, Article 6 (2) (b) of the 1997 European Convention on Nationality and Articles 3 and 7 of the 1989 Convention on the Rights of the Child. This statistical information should include data about the number of claims submitted, as well as the number of positive and negative decisions – disaggregated according to the age of the applicant.

■ **13<sup>th</sup> recommendation:**

In order to ensure full compliance with Article 3 and 7 of the 1989 Convention on the Rights of the Child, as well as to ensure the internal coherence of Hungarian domestic law, Section 3 of the Citizenship Act should be amended in order to grant children of foreign nationality (or as a minimum those of them who are stateless or of unknown nationality) Hungarian citizenship automatically, upon adoption by a Hungarian national.

